contra, Clary v. *Owen* (1860) 81 Mass. 522. Therefore, the court in the instant case might well have departed from direct authority and reached an opposite result. On the other hand, in the absence of an agreement for priority, equity, if it gives a lien at all, properly makes it subject to the mortgagee's express claim to priority.

NEGOTIABLE INSTRUMENTS—CERTIFICATION OF A CHECK—ILLEGAL CONSIDERATION AS DEFENSE TO NON-PAYMENT.—The defendant bank at the plaintiff-payee's request certified a check which had been given in payment of an illegal sale of whiskey, delivery of which was never made. The drawer stopped payment. Upon the bank's refusal to honor the certification, the plaintiff brought this action to recover the amount of the check. *Held,* for the plaintiff. *Jones* v. *Bank of North Hudson* (N. J. L. 1921) 113 Atl. 702.

In the absence of fraud, illegality, or mistake of fact, a bank has no defense in an action on a check certified at the request of the holder. *Cf. B. & K. Manufacturing Co.* v. *Manufacturers-Citizens Trust Co.* (1915) 93 Misc. 94, 156 N. Y. Supp. 445; N. I. L. § 187. By such certification the drawer is discharged and a contract is created between the holder and the drawee. *Metropolitan Nat. Bank of Chicago* v. *Jones* (1891) 137 Ill. 634, 27 N. E. 533; N. I. L. § 188. So in the instant case had the contract been for a horse instead of whiskey, the bank would be liable. In some jurisdictions a mistake of fact may be the basis for rescission if there has been no change of position. *B. & K. Manufacturing Co.* v. *Manufacturers-Citizens Trust Co., supra; cf. Nat. Bank of California* v. *Miner* (1914) 167 Cal. 532, 140 Pac. 27; *contra, Times Square Automobile Co.* v. *Rutherford Nat. Bank* (1909) 77 N. J. L. 649, 73 Atl. 479. This mistake can be taken advantage of only by a bona fide holder. *Cook* v. *State Nat. Bank of Boston* (1873) 52 N. Y. 96. In the instant case while there has been no mistake of fact the check still remains in the hands of the payee and no change of position is evident. Under the New Jersey law which holds certification irrevocable, the decision is sound. *Times Square Automobile Co.* v. *Rutherford Nat. Bank, supra.* However, in those jurisdictions where certification may be rescinded, it seems the better view to allow the bank a defense since failure to do so facilitates illegal transactions. On the other hand, if the transaction had been consummated and the money paid out, the position of the parties should not be altered.

PRINCIPAL AND AGENT—SUIT BY UNDISCLOSED PRINCIPAL—SEALED INSTRUMENT.—The plaintiff seeks specific performance of a contract under seal to make a lease entered into by the plaintiff's agent in his own name with the defendant. *Held,* the defendant's demurrer overruled. *Lagumis* v. *Gerard* (Sup. Ct. Sp. Term, Kings Co. 1921) 190 N. Y. Supp. 207.

At common law an undisclosed principal cannot sue on a sealed contract, *Schaefer* v. *Henkel* (1878) 75 N. Y. 378; or be sued. *Briggs* v. *Partridge* (1876) 64 N. Y. 357; *Walsh* v. *Murphy* (1897) 167 Ill. 228, 47 N. E. 354. And it is immaterial that he has received the benefit. *Klein* v. *Mechanics, etc. Bank and Pearce* (1911) 145 App. Div. 615, 130 N. Y. Supp. 436. Still an unnecessary seal may be disregarded. *Lancaster* v. *Knickerbocker Ice Co.* (1893) 153 Pa. St. 427, 26 Atl. 251; *Kirschbon* v. *Bonzel* (1886) 67 Wis. 178, 29 N. W. 907; *contra, Stanton* v. *Granger* (1908) 125 App. Div. 174, 109 N. Y. Supp. 134, *aff'd,* 193 N. Y. 656, 87 N. E. 1127. The reason underlying the rule prohibiting suit is the solemnity historically attached to a seal. See *Williams* v. *Magee* (1902) 76 App. Div. 512, 515, 78 N. Y. Supp. 550. Where seals have been abolished an undisclosed principal may sue or be sued. *Efta* v. *Swanson* (1911) 115 Minn. 373, 132 N. W. 335; see *Donner* v. *Whitecotton* (1919) 201 Mo. App. 443, 449, 212 S. W. 378; *contra,*

Sanger v. *Warren* (1898) 91 Tex. 472, 44 S. W. 477. New York has not abolished seals. N. Y. Cons. Laws (1909) c. 27, § 44. It has, however, lessened their dignity: (1) By making a seal only presumptive evidence of consideration. N. Y. Civ. Prac. Act § 342. (2) By permitting the word "seal" or the letters "L. S." to constitute one. N. Y. Cons. Laws (1909) c. 27, § 44. (3) By not requiring one on conveyances of land. *Ibid.* c. 52 § 243. (4) By permitting the recording of such a deed. *Ibid.* § 291. And (5) by making a seal unnecessary for a contract to lease. *Ibid.* § 259. As New York in its statute law approaches more nearly those states which by legislation have abolished seals, it seems wise to discard the old common law rule as to contracts under seal and permit an undisclosed principal to sue or be sued. There is no longer any reason for the doctrine, particularly as the third party can by a simple expression limit his dealings to the agent alone if he so desires. *Cf. Moore* v. *Cement Co.* (1907) 121 App. Div. 667, 106 N. Y. Supp. 393. The instant case seems a bold but wise departure from precedent.

PROCESS—FOREIGN CORPORATION—DOING BUSINESS WITHIN STATE.—The defendant, a foreign corporation without offices, agents, salesmen or a license to do business in New York, arranged with the plaintiff, a New York firm, to split commissions on all orders taken by the latter for one X; all such orders subject to approval by X and shipped f. o. b. California. Considerable business was done under this arrangement. An officer of the defendant, who came into New York to settle a controversy over the quality of goods so shipped, was served with process. The state court found the service valid, but on removal to the federal court, *held,* service quashed. *Henry M. Day & Co., Inc.* v. *Schiff-Lang & Co.* (D. C., S. D., N. Y. 1921) 66 N. Y. L. J. 611.

The case upon which the state court based its finding, held that a foreign corporation with offices and salesmen to systematically solicit orders, resulting in steady shipments into the state, is "doing business" in the sense necessary to subject it to the jurisdiction of the New York courts. *Tauza* v. *Susquehanna Coal Co.* (1917) 220 N. Y. 259, 115 N. E. 915. The New York courts, however, recognize that the last word on this subject comes from the United States Supreme Court. See *Dollar Co.* v. *Canadian C. & F. Co.* (1917) 220 N. Y. 270, 277, 115 N. E. 711. It is essential that the corporation be "doing business" within the state. *International Harvester* v. *Kentucky* (1914) 234 U. S. 579, 34 Sup. Ct. 944. What constitutes "doing business" depends upon the facts of each case. See *Peoples Tobacco Co.* v. *American Tobacco Co.* (1918) 246 U. S. 79, 86, 87, 38 Sup. Ct. 233. The mere maintenance of an office and agents to solicit business is insufficient. *Green* v. *Chicago, Burlington & Quincy Ry.* (1907) 205 U. S. 530, 27 Sup. Ct. 595. But if, in addition, the agents have authority to receive payments, an opposite result is reached. *International Harvester* v. *Kentucky, supra.* In the *Green* case the agent had authority to receive certain payments, but this authorization extended to so small a proportion of the total business done that the court construed the agent's activities as in effect merely solicitation. See *Green* v. *Chicago, Burlington & Quincy Ry., supra,* 533; *International Harvester* v. *Kentucky, supra,* 586, 587. Where the corporation's solicitors only take orders from retailers, filled, not by their principals, but by jobbers, the corporation is not amenable to service. *Peoples Tobacco Co.* v. *American Tobacco Co., supra.* Isolated business visits by a corporate officer do not constitute "doing business." See *Hoyt* v. *Ogden Portland Cement Co.* (C. C. 1911) 185 Fed. 889, 899. Nor does activity by a domestic bank on behalf of a foreign bank corporation render the latter liable to service. *Bank of America* v. *Whitney Central National Bank* (D. C. 1921) 65 N. Y. L. J. 1551. The instant case seems clearly sound.